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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,227	09/18/2006	Elizabeth Harumi Kobara Pestell	HF/15-23033/A/PCT	7040
324	7590	05/12/2010	EXAMINER	
BASF Performance Products LLC			NGUYEN, THUY-AI N	
Patent Department				
540 White Plains Road			ART UNIT	
P.O. Box 2005			PAPER NUMBER	
Tarrytown, NY 10591			1796	
			NOTIFICATION DATE	DELIVERY MODE
			05/12/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/593,227	<b>Applicant(s)</b> KOBARA PESTELL ET AL.	
	<b>Examiner</b> THUY-AI N. NGUYEN	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1- 2, 4- 8, 13- 15 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1- 2, 4- 8, 13- 15 and 20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2010 has been entered. Claims 3, 9- 12 and 16- 20 have been cancelled. Claim 20 is added. Claims 1- 2, 4- 8, 13- 15 and 20 are pending.

### ***Claim Rejections - 35 USC § 103***

Claims 1, 2, 4-7, and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) in view of Model et al. (US. 3,903,007).

Regarding claims 1 and 2, Ghosh et al. teach the method and the composition for treating the fabric articles (abstract and [0119]), wherein the composition comprises antimicrobial agent including 2-(4'-thiazolyl) benzimidazole [0101] which satisfy the formula as recited by the applicant when R<sub>1</sub> is hydrogen. Ghosh et al. teach the composition comprising from about 0.01 to 20 percent of antimicrobial organism [0100], including 2-(4'-thiazolyl) benzimidazole [0101], 1 to 99 percent by weight of surfactants including anionic, nonionic, cationic, and zwitterionic [0095] which is detergent. Ghosh et al. further teach the composition comprising builder, bleach, bleach activator, alcohol,

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hydrotropes, fabric softening agent [0118], and water in an amount of from 1 to 90 percent by weight of the composition [0112]. Ghosh et al. '196 teach the method of cleaning the fabric articles in conventional laundry process or in a dry cleaning process [0027] in which the cleaning composition should contact with the fabric articles, wherein the conventional cleaning is carried out with a large amount of water at the consumer's home or other place [0004]. Ghosh et al. teach further teach the composition comprising an antimicrobial agent 2,4,4'- trichloro- 2' hydroxyl diphenyl ether [0102], which satisfies the formula as recited by the applicant when  $p=0$ ,  $n=0$ , and  $o=1$ ,  $m=1$ , and  $r=2$ .

Ghosh et al. '196 do not teach cleaning method having the ratio of the textile fiber materials to water in washing machine. Model et al. teach detergent composition comprising hydroxyl- diphenyl ether and method of using (see examples I - II, col. 9 - 10), wherein the ratio of fabric to water (washing liquor) is 1: 20. Ghosh et al. '196 and Model et al. are analogous arts because they are in the same field of endeavor, namely, cleaning composition comprising the same antimicrobial agent. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the method of cleaning and the ratio of Model et al. in the teaching of Ghosh et al. to provide the convenience for the consumer and achieve a suitable level for microbial disinfection.

Regarding claims 4 -7, see the rejection of claim 1. Ghosh et al. further teach the composition comprising cleaning adjuncts in an amount of from 0.01 to 10 percent [0028] including builder, bleach and bleach activator (claim 19, p. 8). Ghosh et al. also

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teach the composition comprising sulfonated oleic acid [0101] which is capable of using as component (b) which can be used in an amount of from 0.01 to 20 percent [0100].

Regarding claim 14, Ghosh et al. teach the method of using the composition for cleaning clothing [0027]. However, Ghosh et al. do not teach the method being used for cotton, wool, and polyamide. Model et al. teach a detergent composition and a method of using the composition cleaning fibers including cotton, wool and polyamide (col. 5: 62- col. 6: 3). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the teaching of Model et al. in the teaching of Ghosh et al.. The motivation is to provide acceptable cleaning across variety of materials to meet high expectation of the users.

Regarding claim 15, see the rejection of claim 1. Ghosh et al. do not teach the method, wherein the composition is in solid or liquid. Model et al. teach the composition in liquid form (emulsion concentrate, col. 22: 3- 47), or in solid form (powder, col. 21: 30- 68). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use variety form of the composition of Model et al. in the teaching of Ghosh et al.. The motivation is to provide the wide range for using the composition in different applications.

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) and Model et al. (US. 3,903,007) as applied to claim 1 above and further in view of Majeti et al. (US. 2003/0212232).

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Regarding claim 8, see the rejection of claim 1. Ghosh et al. teach the cleaning method, wherein the composition comprising enzyme. However, Ghosh et al. do not teach specific enzyme in the composition. Majeti et al. teach the composition for treating textile and hard surface, wherein the composition comprises the enzyme including protease, amylase, and lipase [0181]. Majeti et al. and Ghosh et al. are analogous art because they are in the same field of endeavor, namely, home care composition for textile or fabric and other surface, wherein both compositions comprises antimicrobial agent 2', 4, 4'-trichloro-2-hydroxy-diphenyl-ether. At the time of the invention, it would have been obvious to one of ordinary skill in the art to use protease, amylase, and lipase of Majeti et al. in the teaching of Ghosh et al. as an alternative equivalent in order to help break down the stain on the surface being treated.

Regarding claim 13, see the rejection of claims 1 and 8. Ghosh et al. do not teach specific temperature. Model et al. teach the method of cleaning as said, wherein the temperature of the process is at 40 degree of Celsius (col. 11: 1- 8). At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the temperature in the method of Model et al. in the teaching of Ghosh et al.. The motivation is to achieve the effective cleaning efficacy of the composition.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ghosh et al. (US. 2004/0261196) and Model et al. (US. 3,903,007) as applied to claim 1 above in view of Apostolatos et al. (US. 4,118,332).

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Regarding claim 20, Ghosh et al. teach the method having the composition as said above. However, Ghosh et al. do not teach the composition comprising hydroxy-diphenyl ether as said in the claim. Apostolatos et al. teach a composition comprising antimicrobial agent diphenyl ether including 4, 2', 4- trichloro-2- hydroxy diphenyl ether or 4, 4'- dichloro-2- hydroxy diphenyl ether (abstract, col. 1, 45- 55 and col. 2: 44- 50). Ghosh et al. and Apostolatos et al. are analogous arts because they have similar technical difficulty in relating to the antimicrobial containing compositions. At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute 4, 4'- dichloro-2- hydroxy diphenyl ether in the teaching of Ghosh et al. for 4, 2', 4- trichloro-2- hydroxy diphenyl ether as an equivalent alternative. An express suggestion to substitute one equivalent component for another is not necessary to render such substitution obvious. In re Fout, 675 F.2d 297,213 USPQ 532 (CCPA 1982) MPEP. 2144.06.

### ***Response to Arguments***

Applicant's arguments filed on April 28, 2010 have been fully considered but they are not persuasive. Applicants disagree that the composition from the teaching of Ghosh implicitly has the same cleaning and antimicrobial effectiveness as said by the applicant because there is no suggestion for choosing the same antimicrobial agents as said in the claim. This is not found persuasive because Ghosh et al. prefer the composition comprising antimicrobial agents including 2-(4- thiazolyl)- benzimidazole and 2, 4, 4'- trichloro-2 - hydroxydiphenyl ether (see claims 7, 25 and 26, p. 8 and 9).

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THUY-AI N. NGUYEN whose telephone number is (571)270-3294. The examiner can normally be reached on Monday-Friday: 8:30 a.m. - 5:00 p.m. eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Milton I. Cano/  
Supervisory Patent Examiner, Art Unit 1796

/THA/